

MARTINEZ
"Cellular Communications Handsets Having Variable
Appearance Housings And Methods Therefor"
Atty. Docket No. CS10862

Appl. No. 10/084,965
Confirm. No. 2203
Examiner R. Osorio
Art Unit 2673

Reply to Examiner's "Response to Arguments"

Discussion of Relevant Art

5 The Examiner asserts in the Response that Lin is within the scope
and content of the art on the basis that it is

10 ... either in the applicant's [sic; field] of endeavor or, if not, then
be [sic; it must] reasonably pertinent to the particular problem
with which the applicant was concerned....

15 While the Examiner recites the applicable rule, he fails however to assert how
the facts of the instant case comport therewith. The Examiner must provide a
factual basis for rejecting a claim as being obvious. *In re Piasecki*, 745 F.2d 1468,
223 USPQ 785 (Fed. Cir. 1984).

20 As noted previously, Lin is in the field of window security
systems incorporating electrochromic materials. See the "Field of the
Invention" and claims of Lin. Lin is indisputably not in the same field as the
present invention, namely, handheld electronics devices and wireless
communications handsets. Lin is also not reasonably pertinent to the
particular problem with which the instant applicant was concerned. The
concern of Lin is to provide a security window capable of darkening and
detecting breakage. In contrast, the instant application is concerned with
providing electronics devices including cellular telephone handsets that may
25 be personalized and differentiated aesthetically. See the "Background of the
Inventions" in the instant specification. Lin is not reasonably pertinent to the

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particular problem addressed by the applicant, and therefore it would be unreasonable to impute knowledge of Lin to the applicant.

Discussion of Success & Motivation

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Generally, there must have been a reasonable expectation that the combination or modification would have succeeded at the time of the invention. *Hodash v. Block Drug Co. Inc.*, 229 USPQ 182 (Fed. Cir. 1986). MPEP § 2143.02. As noted previously, it is questionable whether the Examiner's
10 alleged combination would be operable. The thermochromic material of Lehtiniemi changes as a function of ambient temperature. In Lehtiniemi, the temperature that affects the thermochromic material is beyond the control of the user. Thus there is no reason to combine the control circuit of Lin to control temperature in Lehtiniemi. In this light, the Examiner's putative
15 combination appears motivated only by hindsight, which is improper.

Allowability of Claims Over Lehtiniemi & Lin

Rejection Summary

20

Claims 10, 14-18, 21, 22 & 24-26 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,466,299 (Lehtiniemi) in view of U. S. Patent No. 6,626,216 (Lin). Official Action, 20 January 2004, para. 2.

25

The Examiner concedes that Lehtiniemi "... fails to teach of a control circuit having a user variable output that coupled [sic] to and that

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makes change appearance of the variable input responsive variable appearance
portion", though the Examiner alleges that it would have been obvious

5 ... to have the control circuit, as taught by Lin, in the device of
Lehtiniemi so that the color or shade of the electrochromic
medium can be progressively changed by a user between a clear
and a maximum desired color or shade (col. 8, lines 65-67).

10 The Examiner's discussion of previously cancelled Claims 11-13
and 23 is moot.

Discussion of Allowability of Independent Claim 10

15 Regarding Claim 10, the prior art fails to disclose or suggest an
electronic device, comprising

20 ... a housing disposed about at least a portion of the
electrical hardware,
at least a portion of the housing comprising a variable input
responsive variable appearance portion,
a control circuit having a user variable output coupled to
the variable input responsive variable appearance portion of the
housing,
25 whereby the variable input responsive variable appearance
portion of the housing changes appearance in response to the user
variable output of the control circuit.

30 Contrary to the Examiner's assertion, there is no suggestion in the
prior art to combine the electrochromic control circuit of Lin with the device of
Lehtiniemi. Lehtiniemi discloses a cell phone housing including a
thermochromic material that changes color with changing internal or ambient

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temperature. Lin discloses security system for electrochromic windows. One of ordinary skill in the art would not look to window and/or window security arts to resolve problems related to electronics housings, and thus knowledge of window and window security arts should not be imputed to those of ordinary skill in the electronics housing arts.

There is also no suggestion to combine the electrochromic windows of Lin with the electronics housings disclosed by Lehtiniemi. Moreover, it is questionable whether such a combination would be operable. The thermochromic material of Lehtiniemi changes as a function of ambient temperature. In Lehtiniemi, the temperature that affects the thermochromic material is beyond the control of the user. Thus there is no reason to control temperature in Lehtiniemi. In this light, the Examiner's putative combination appears motivated only by hindsight, which is improper. Claim 10 and the claims that depend therefrom are thus patentably distinguished over Lehtiniemi and Lin.

Discussion of Allowability of Independent Claim 21

Regarding Claim 21, the prior art fails to disclose or suggest a method in a wireless communications handset having an outer housing with a variable input responsive variable appearance property portion, comprising:

... providing a user variable input to the wireless communication handset;

varying the appearance of the electro-chromic material portion of the housing in response to the user variable input applied to the wireless communication handset.

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Contrary to the Examiner's assertion, there is no suggestion in the prior art to combine the electrochromic control circuit of Lin with the device of Lehtiniemi. Lehtiniemi discloses a cell phone housing including a thermochromic material that changes color with changing internal or ambient temperature. Lin discloses security system for electrochromic windows. One of ordinary skill in the art would not look to window and/or window security arts to resolve problems related to electronics housings, and thus knowledge of window and window security arts should not be imputed to those of ordinary skill in the electronics housing arts.

There is also no suggestion to combine the electrochromic windows of Lin with the electronics housings disclosed by Lehtiniemi. Moreover, it is questionable whether such a combination would be operable. The thermochromic material of Lehtiniemi changes as a function of ambient temperature. In Lehtiniemi, the temperature that affects the thermochromic material is beyond the control of the user. Thus there is no reason to control temperature in Lehtiniemi. In this light, the Examiner's putative combination appears motivated only by hindsight, which is improper. Claim 21 and the claims that depend therefrom are thus patentably distinguished over Lehtiniemi and Lin.

Allowability of Claims Over Lehtiniemi, Lin & Bown

Rejection Summary

Claim 14 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,466,299 (Lehtiniemi) in view of U. S.

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Patent No. 6,626,216 (Lin) and US 2002/0075135 (Bown). Official Action, 20
January 2004, para. 3.

The Examiner relies upon Bown for teaching a light emitting
polymer material.

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Discussion of Allowability of Claim 14

Regarding Claim 14, contrary to the Examiner's assertion, Stein
fails to disclose or suggest, in combination with the limitations of Claim 10 and
any intervening claims,

10

... the variable input responsive variable appearance portion of
the housing is a light emitting polymer material.

15

Lehtiniemi discloses a thermochromic material in a cell phone
housing and Lin discloses thermochromic windowpanes. Bown discloses the
use of a light-emitting polymer or pigment on a vibro-acoustic device.
However, there is no suggestion in Bown for varying the appearance of the
light-emitting polymer material by user input. Claim 14 is thus further
patentably distinguished over Lehtiniemi, Lin and Bown.

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Allowability of Claims Over Lehtiniemi, Lin, Bown & Bailey

Rejection Summary

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Claims 15-16, 22 and 24 stand rejected under 35 USC 103(a) as
being unpatentable over U.S. Patent No. 6,466,299 (Lehtiniemi) in view of U. S.

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Patent No. 6,626,216 (Lin), US 2002/0075135 (Bown) and U.S. 5,849,046
(Bailey). Official Action, 20 January 2004, para. 2 (second occurrence).

The Examiner relies upon Bailey for teaching an electrochromic
material and control circuit, which is not disclosed by the several other
primary and secondary references.

Discussion of Allowability of Claim 15

Contrary to the Examiner's assertion, the prior art fails to disclose
or suggest, in combination with the limitations of Claim 10 and any
intervening claims,

... the variable input responsive variable appearance portion of
the housing is an electro-chromic material, the control circuit
having a variable voltage output coupled across the electro-
chromic material.

Bailey discloses an electrochromic material used to indicate the
charge on a battery. There is no suggestion to use the thermochromic voltage
detector in Bailey as a variable appearance housing portion as in Claim 15.
Also, the voltage detector of Bailey does not have a user variable output, since
it merely detects whatever charge remains on the battery. Claim 15 is thus
further patentably distinguished over Lehtiniemi, Lin, Bown and Bailey.

Discussion of Allowability of Claim 16

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Regarding Claim 16, contrary to the Examiner's assertion, the prior art fails to disclose or suggest, in combination with the limitations of Claim 15, that "... the electro-chromic material is an electro-chromic polymer." Claim 16 is thus further patentably distinguished over Lehtiniemi, Lin, Bown and Bailey.

Discussion of Allowability of Claim 22

Regarding Claim 22, the prior art fails to disclose or suggest in combination with the limitations of Claim 21,

... providing the user variable input by selecting a voltage applied by an electrical control circuit having a variable voltage output coupled to an electro-chromic portion of the housing.

The other prior art references fail to disclose a control circuit for providing a user variable input. The variable voltage output on the battery of Bailey is not a electrical control circuit. Claim 22 is thus further patentably distinguished over Lehtiniemi, Bown and Bailey.

Discussion of Allowability of Claim 24

Regarding Claim 24, the prior art fails to disclose or suggest in combination with the limitations of Claim 21 and any intervening claims "... varying the variable appearance property by changing a color of the electro-chromic portion of the housing in response to a variable voltage applied

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thereto." Claim 24 is thus further patentably distinguished over Lehtiniemi,
Lin, Bown and Bailey.

**Allowability of Claims Over Lehtiniemi,
Lin, Bown, Bailey & IDS Web Article**

Rejection Summary

Claims 17-18 and 25-26 stand rejected under 35 USC 103(a) as
being unpatentable over U.S. Patent No. 6,466,299 (Lehtiniemi) in view of U. S.
Patent No. 6,626,216 (Lin), US 2002/0075135 (Bown), U.S. 5,849,046 (Bailey)
and the IDS Web Article. Official Action, 20 January 2004, para. 3 (second
occurrence).

The Examiner relies upon the IDS Web Article for teaching an "...
anodically coloring polymer and a cathodically coloring layer separated by a
solid-state gel electrolyte layer", which is not disclosed by the several other
primary and secondary references.

Discussion of Allowability of Claim 17

Regarding Claim 17, contrary to the Examiner's assertion, the
prior art fails to disclose or suggest, in combination with the limitations of
Claim 10 and any intervening claims,

... the electro-chromic material includes an anodically coloring
polymer layer and a cathodically coloring layer separated by a
solid-state gel electrolyte layer, the anodically and cathodically
coloring layers disposed between first and second transparent
conducting layers.

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5 The mere existence of the subject material does not render it obvious to use the material in other applications. Moreover, the Examiner has not cited any reason or rationale supporting the putative combination/modification. The dubious rejection is overshadowed by suggestions of hindsight reconstruction, a practice admonished repeatedly by the Board of Patent Appeals and Interferences. Claim 17 is further patentably distinguished over the prior art.

Discussion of Allowability of Claim 18

10 Regarding Claim 18, contrary to the Examiner's assertion, Stein fails to disclose or suggest, in combination with the limitations of Claim 10 and any intervening claims,

15 ... the electro-chromic material includes first and second transparent insulating layers, the first and second transparent conducting layers disposed between the first and second insulating layers.

20 The mere existence of the subject material does not render it obvious to use the material in other applications. Moreover, the Examiner has not cited any reason or rationale supporting the putative combination/modification. The dubious rejection is overshadowed by suggestions of hindsight reconstruction, a practice admonished repeatedly by the Board of Patent Appeals and Interferences. Claim 18 is thus further patentably distinguished over the art.

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Discussion of Allowability of Claim 25

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Regarding Claim 25, the prior art fails to disclose or suggest, in combination with the limitations of Claim 10 and any intervening claims,

5 ... the electro-chromic material includes an anodically coloring polymer layer and a cathodically coloring layer separated by a solid-state gel electrolyte layer, the anodically and cathodically coloring layers disposed between first and second transparent conducting layers.

10 The mere existence of the subject material does not render it obvious to use the material in other applications. Moreover, the Examiner has not cited any reason or rationale supporting the putative combination/modification. The dubious rejection is overshadowed by suggestions of hindsight reconstruction, a practice admonished repeatedly by the Board of Patent Appeals and
15 Interferences. Claim 25 is thus further patentably distinguished over the art.

Discussion of Allowability of Claim 26

20 Regarding Claim 26, the prior art fails to disclose or suggest in combination with the limitations of Claim 17

25 ... the control circuit having a first output coupled to the first transparent conducting layer, the control circuit having a second output coupled to the second transparent conducting layer by a variable resistance element.

The mere existence of the subject material does not render it obvious to use the material in other applications. Moreover, the Examiner has not cited any reason or rationale supporting the putative combination/modification. The

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dubious rejection is overshadowed by suggestions of hindsight reconstruction,
a practice admonished repeatedly by the Board of Patent Appeals and
Interferences. Claim 26 is thus further patentably distinguished over the art.

5

Prayer For Relief

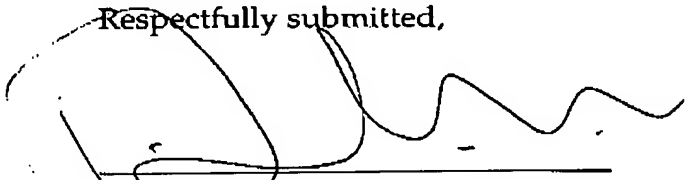
In view of any amendments and the discussion above, the Claims
of the present application are in condition for allowance. Kindly withdraw any
10 rejections and objections and allow this application to issue as a United States
Patent without further delay.

15

Respectfully submitted,

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